



Model Trade Union Facilities Agreement

Introduction – Model Trade Union Facilities Agreement

The NASUWT Model Trade Union Facilities Agreement is for lay activists to use as a resource in negotiating a written Trade Union Facilities Agreement (TUFA) with their employer, to sustain the continued support and strength of the NASUWT as a lay-led organisation.

This model policy provides a working document based on relevant legislation that NASUWT Secretaries will find helpful when seeking to negotiate a written TUFA or review an existing TUFA, with all respective employers, including academies, free and trust schools or in the maintained sector.

The funding for trade union facilities time arrangements changed from April 2013. Without a central fund, all individual schools, including academies, will need to make arrangements to meet the statutory obligations to provide release for representatives to undertake their trade union responsibilities.

Some local authorities have agreed to operate a buy-back arrangement (sometimes in the form of a service level agreement) in respect of trade union facility time, in which schools within its boundaries, including academies, may participate so that individual schools are not required to fund facilities time at school level. **Successive governments have recognised the importance of good industrial relations and have legislated to provide a statutory basis for union facility time as follows:**

- paid time off for union representatives to accompany a worker to a disciplinary or grievance hearing;
- paid time off for union representatives to carry out trade union duties;
- paid time off for union representatives to attend union training;
- paid time off for union learning representatives to carry out relevant learning activities;
- paid time off for union health and safety representatives during working hours to carry out health and safety functions.

These provisions are contained within the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1977.

In Northern Ireland, these provisions are contained within the Employment Relations (Northern Ireland) Order 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1977.

Since trade union recognition rights were transferred to academies and free schools in accordance with Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) legislation, the issue is not whether but how respective employers will support paid time off for union representatives, union learning and safety representatives.

Many academies have already opted to contribute to locally agreed ‘pools’ held by their local authority that cover the costs of facility time in all the schools within their area. This model policy and the arguments presented here should support your negotiations regarding your TUFA. Those negotiations could be with local authorities or independent employers.

If facility time is not organised centrally, then the NASUWT can:

- press for release of a union representative at each school;
- ensure trade union training requirements are met for representatives;
- insist that the employee’s statutory right to representation is met;
- their release from teaching to accompany members to meetings could be more disruptive than the current arrangements where a union representative is released centrally to perform these tasks.

The current arrangements in the maintained sector allow trade union representatives who understand the local context to deal with issues arising within local schools without necessarily being a member of staff of that particular school. They also allow experienced trade union representatives to seek to resolve problems at the lowest possible level, often informally.

The ‘pooled’ arrangements provide a mechanism to cover not only time for union duties, but also for maternity and long-term sick leave cover and public duties such as jury service. Maintaining a positive relationship with the local authority can bring other mutual benefits too, around admissions, sports facilities, special educational needs (SEN) arrangements and transport requirements. Many academies across England have agreed to buy into local authority trade union facilities arrangements where the central fund has been de-delegated. The academies within your boundaries will have received funding for trade union facilities time in their budgets via the Local Authority Central Spend Equivalent Grant (LACSEG). We believe that local authorities could operate similar arrangements where funding has been delegated which would allow all schools – maintained schools, free schools and academies – the option to buy back into a central fund. Department for Education (DfE) guidance advises that local authorities may offer such buy-back arrangements.

Irrespective of the funding arrangement, officers are still entitled to be released to represent union members. **Without a central pool, each school will be required to consult and negotiate separately with trade unions on employment procedures.** Each school will be required to negotiate, fund and manage separate arrangements for trade union facilities and time off with pay for each trade union with members at the school. All schools will face higher costs by having to release trade union representatives from each union at the school to undertake their trade union duties and attend relevant union training in order to perform the role effectively. It is simply a matter of economies of scale; 20,000-plus employers acting independently in providing trade union facilities as required by law will cost astronomically more than 152 employers in the maintained sector (i.e. 27 shire counties, 32 London Boroughs, 36 metropolitan borough councils, 55 unitary authorities and two sui generis).

Trade union duties and activities

Trade union facility time provides the platform upon which union representatives in workplaces in both the public and private sectors carry out often demanding and complex roles which include provision of advice to members, formal representation of members in grievance and disciplinary hearings and negotiating with managers over terms and conditions. This amounts to union representatives receiving paid time off work – but usually in work time – for a relatively tightly defined set of trade union duties. The legal basis for these arrangements is set out in the Trade Union and Labour Relations (Consolidation) Act 1992 and the Acas Code of Practice *Time Off for Trade Union Duties and Activities*.

This NASUWT Model Policy can be accessed by National Executive Members, Secretaries, Local Officers and Workplace Representatives by following the login procedure on the NASUWT website.

The Word document versions can be downloaded and edited for your own purposes.

Go to the NASUWT website at www.nasuwt.org.uk to access the joint letters on ‘Facilities Time Funding’, which can be found if you search for ‘facilities’ as pdf files. Alternatively, you can contact your Regional Centre for advice.

Model Trade Union Facilities Agreement

THE EMPLOYER

TRADE UNION FACILITIES AGREEMENT

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1.0 INTRODUCTION

The aim of this Agreement is to support and develop employer/employee relations at the **Employer's name**. The **Employer's name** is committed to solving employee relations issues through discussion and agreement.

- 1.1 This Agreement provides a clear framework for the provision of facilities and facility time for trade union officials, representatives and members, to ensure fairness and consistency is applied. It encompasses a joint responsibility from the **Employer** and trade unions that arrangement for time off from work is to the mutual advantage of all parties.
- 1.2 Successful operation of these arrangements depends on managers and trade unions acting reasonably. The amount, purpose, occasion and any conditions subject to which time off applies, must take account of service needs at all times and will be those that are reasonable in all circumstances.
- 1.3 The **Employer** and the recognised trade unions will seek to resolve any problems arising from the operation of this Agreement in a constructive manner.

2.0 STATUTORY PROVISIONS

- 2.1 The provisions of this Agreement are in accordance with the Trade Union and Labour Relations (Consolidated) Act (TULR(C)A) 1992 and the relevant amendments made by the Employment Act 2008. This procedure is also based upon the recommendations within the Acas Code of Practice 3: *Time Off for Trade Union Duties and Activities (including guidance on time off for union learning representatives)*. The revised version was published in January 2010.
- 2.2 Whilst this Agreement is not legally enforceable, the **Employer** and the trade unions are committed to maintaining and building a successful partnership that is committed to the terms stated herein.

3.0 SCOPE

- 3.1 This Agreement is between the **Employer** and the recognised trade unions, listed below. NB: The list below is not exhaustive and may need to be modified to meet local/national requirements.

NASUWT – The Teachers' Union

ASCL (Association of School and College Leaders)

ATL (Association of Teachers and Lecturers)

GMB

NAHT (National Association of Head Teachers)

NUT (National Union of Teachers)

UNISON

UNITE

- 3.2 This Agreement applies to:

- (i) all employees, whether full or part time, who are members of a recognised trade union;
- (ii) all accredited trade union officials;
- (iii) all accredited trade union representatives;
- (iv) all accredited trade union health and safety representatives (N.B. refer to Appendix F Acas Code of Practice (COP));

- (v) all accredited union learning representatives (NB: refer to Appendix F Acas COP);
- (vi) all recognised trade unions;
- (vii) all managers;
- (viii) the **Employer's** Trust Board.

4.0 DEFINITIONS

- 4.1 For the purposes of this document, the term 'trade union' shall be taken to include all staff side organisations which are recognised for employee relations purposes.
- 4.2 The term 'official' is used to refer to full and part time employees working on behalf of a trade union at branch level. S/he will have been elected in accordance with the rules of the trade union.
- 4.3 The term 'representative' is used to refer to an employee who operates on behalf of a trade union at a local level. S/he will have been appointed in accordance with the rules of the trade union.
- 4.4 The guidance in this document primarily applies to duties and activities which relate to employee relations between the **Employer** and its employees.

5.0 GENERAL PRINCIPLES

- 5.1 The general purpose of this Agreement is to aid and improve the effectiveness of relationships between the **Employer** and the recognised trade unions. This Agreement is based on a belief that both the trade unions and the **Employer** accept joint responsibility for ensuring a well-ordered system of trade union organisation and employee relations.
- 5.2 The parties to the Agreement recognise the contribution that can be made by the trade unions and their officials/representatives to the efficient and effective services provided by the **Employer**.
- 5.3 Individuals will not be discriminated against during the course of their employment for membership of a trade union or activities undertaken in the capacity of trade union representative/official.

6.0 TRADE UNION/MANAGEMENT OBLIGATIONS

- 6.1 This Facilities Agreement underpins a partnership approach adopted between the **Employer** and the recognised trade unions. Therefore, there are specific responsibilities on management and the trade unions in this context.
- 6.2 The trade unions will:
 - (a) provide membership numbers to the **Employer** on 31 December every year to ensure that members are adequately represented;
 - (b) confirm in writing to the **Employer** which union members are elected or resign as officials or representatives at the earliest opportunity. This correspondence will state the position and constituency to which they are appointed as well as the effective date of office;
 - (c) for teacher trade unions, notice of any change of office must be confirmed in writing by the end of the spring term so that headteachers have a full term to make timetable and staffing adjustments as required. The period of office will follow the academic year, i.e. commencing on 1 September and terminating on 31 July;
 - (d) provide appropriate training for officials and representatives;
 - (e) give reasonable notice of time-off requirements.
- 6.3 The **Employer's** Trust Academies will:
 - (a) implement a central budget and accounting systems for trade union facilities finances;

- (b) ensure that management at all levels are familiar with arrangements relating to the Facilities Agreement;
- (c) ensure that trade union officials, representatives and members are not treated less favourably or disadvantaged during their employment for undertaking trade union duties or activities;
- (d) provide facilities and time off to recognised trade union officials, representatives and members, as detailed below.

7.0 METHOD OF CALCULATION OF TIME OFF FOR TRADE UNION REPRESENTATIVES

7.1 Facility time for trade union officials, will be allocated upon an agreed membership base of each union.

- (i) The **Employer** will grant trade union facilities time based on the following formula. The table will move forward on the basis of an arithmetic progression:

MEMBERSHIP	FTE
0-200	0.2
201-300	0.3
301-400	0.4
401-500	0.5
501-600	0.6
601-700	0.7
701-800	0.8
801-900	0.9
901-1,000	1.0
1,001-1,100	1.1
1,101-1,200	1.2

- (ii) Trade union officials will be paid their current rate of contractual pay and allowances whilst on trade union facilities time release.
- (iii) In exceptional circumstances due to workload demands, it will be necessary to extend the time off for trade union officials for a specific period.
- (iv) In the event that a trade union representative/official is appointed to the national executive of a recognised trade union, additional facilities time will be granted. This will be subject to separate consultation with the **Employer**. Account will be taken of individual circumstances and the substantive allocation granted to that particular trade union.

8.0 CONDUCT OF TRADE UNION REPRESENTATIVES

- 8.1 It is the responsibility of the respective trade unions to ensure that their representatives fully understand the extent of their authority and responsibility in their role. Any necessary training required will be provided and/or organised by the trade unions.
- 8.2 In the event that the **Employer** has any concerns regarding the conduct of a union representative, there will be the right to raise this in writing with the relevant union.
- 8.3 In the event of any trade union officer being subject to any alleged breach of any formally adopted **Employer** procedure agreed with the trade unions, in accordance with the Acas COP, the appropriate full-time official will be informed prior to any action being taken by the **Employer**.

9.0 ENTITLEMENT TO TIME OFF FOR TRADE UNION DUTIES

- 9.1 It is recognised that trade union representatives have a key role to play in the industrial relations process and in representing members both individually and collectively. The conditions set out below underpin this and detail the circumstances to which time off for trade union duties apply.

9.2 Trade union representatives are permitted to take ‘reasonable’ time-off to carry out trade union-related duties, subject to service requirements. It is the **Employer’s** prime objective to ensure a high-quality service is maintained at all times. The trade unions should be aware of the range of operational requirements, which must be taken into account when considering requests for time off. Such factors include:

- statutory requirements;
- service delivery;
- the meeting of work deadlines;
- the need for safety and security.

9.3 Entitlement to time off applies where duties relate to:

- negotiations with the **Employer** as per section 178(2) of the TULR(C)A 1992; or
- any other functions on behalf of the **Employer’s** Academies employees which are related to matters falling within section 178(2) of TULR(C)A 1992;
- any other legislation which defines the rights and entitlements of trade union officers under health and safety and union learning representatives respectfully.

9.4 There is no statutory right to pay for time when a trade union duty is carried out at a time when the representative would not otherwise have been at work. However, where such hours are at the specific request of management, time off in lieu (TOIL) or, in exceptional cases, overtime may be approved, in line with local arrangements.

10.0 DEFINITION OF TRADE UNION DUTIES

10.1 Trade union duties include matters relating to the following:

- terms and conditions of employment, or working conditions of staff;
- engagement or non-engagement, or termination or suspension of employment, of one or more members of staff;
- allocation of work or the duties of employment as between workers or groups of workers;
- matters of discipline and grievance;
- trade union membership;
- facilities for officials of trade unions;
- machinery for negotiation or consultation and other procedures;
- any other matters associated with the legitimate interests of the trade union concerned and its members.

10.2 A detailed breakdown is contained in Appendix A, as per the Acas COP.

11.0 ENTITLEMENT TO TIME OFF FOR TRADE UNION ACTIVITIES

11.1 The **Employer** recognises that trade unions require the active participation of its members to operate effectively. As such, employees who are members of a recognised trade union are permitted to reasonable time off during working hours to undertake union-related activities.

Time off for the following activities will be paid:

- attendance at workplace meetings to discuss and vote on the outcome of negotiations with the **Employer**;
- accessing the services of a Union Learning Representative (ULR).

11.2 Time off for these ‘activities’ will be ‘reasonable’ in all circumstances. All parties should seek to agree time off at a period which minimises disruption to the **Employer’s** services.

12.0 TRAINING

12.1 The **Employer** recognises that it is in the interests of good employee relations that trade union officials and representatives receive training to enable them to undertake their roles effectively. Therefore, trade union officials and representatives will be afforded the opportunity to attend training courses which are specifically relevant to their role within the trade union, during working hours, subject to the needs of the service.

12.2 It is the responsibility of the trade union(s) to ensure that:

- representatives and officials have received sufficient training to enable them to operate competently in their roles. In the case of ULRs, they must be trained:
 - at the time when the trade union provides the **Employer** with written notification of the appointed/elected ULRs; or
 - within six months of that date and this again must be confirmed in writing. In exceptional circumstances, this six-month period may be extended, subject to prior discussion and approval between the trade union and the **Employer’s** Academies to pay for training fees and expenses other than for courses organised by the **Employer’s** Trust Academies;
- training is approved by the relevant Trades Union Congress of the recognised trade union or by the trade union itself.

12.3 Management will consider releasing officials and representatives for initial training in representative skills as soon as possible after their appointment/election.

12.4 Both officials and representatives will provide management with ten working days’ notice in advance of any training courses they wish to attend, where possible, OR a reasonable amount of time which will allow continuation of service delivery.

13.0 PROCEDURE FOR REQUESTING TIME OFF

13.1 School-based representatives requesting time off to pursue employee relations duties or activities must notify the nominated manager at the earliest opportunity.

13.2 Consultation will take place between relevant parties where:

- it is believed that the request may not fall within the terms of this Agreement;
- the nominated manager believes that granting the request would seriously disrupt the service of the **Employer** or create a potential threat to the health and safety of employees, the public or the **Employer’s** property.

N.B. the trade union representative concerned will be consulted, along with the union branch officer or regional official.

14.0 FACILITIES

14.1 The following facilities will be provided for trade union officials in order to carry out their trade union duties and activities:

- use of accommodation for meetings;
- access to telephone and fax. All calls must be logged and charges will be made to each union for external usage;
- appropriate use of the **Employer's** e-mail system and internal mail system. Any such usage should be in accordance with the **Employer's** IT Security Policy and the Code of Practice for Computer and Telephone Users;
- the deduction of trade union membership fees at source where this is feasible and agreed;
- secure accessible notice board facilities. The management of such notice boards will be the responsibility of the trade unions. No notices may be placed elsewhere on the **Employer's** premises without the prior consent of management;
- full access to the **Employer's** policies, procedures and documents relating to terms and conditions of service of staff they represent, via the intranet or hard copy, on request;
- secure storage in which to keep trade union-related documentation;
- access to PC and photocopying facilities will be granted, subject to discussion with the relevant manager.

15.0 ARRANGEMENTS FOR STAFF WITH NON-STANDARD WORKING PATTERNS

15.1 To ensure effective union representation, consideration will be given to:

- employees who work shifts;
- part-time employees;
- employees employed in dispersed locations;
- employees with particular domestic commitments which management have been made aware of;
- employees with a disability for whom reasonable adjustment may be required.

15.2 Wherever possible, meetings shall be convened at a mutually convenient time, date and venue with the aim of causing minimal disruption to service delivery.

15.3 In the event that it is necessary for management to arrange a joint meeting which falls outside the 'normal' working hours for the categories of union members listed above, TOIL or, in exceptional cases, overtime may be approved, in line with local arrangements.

15.4 Staff employed at dispersed sites, who are required to attend meetings with management, will be granted reasonable travelling time.

16.0 EXPENSES

16.1 The **Employer** will only reimburse expenses incurred by officials and representatives where these specifically relate to duties undertaken at the **Employer's** request. There will be prior agreement made with the relevant line manager before expenses are incurred.

16.2 Travelling expenses and subsistence allowances which have been incurred for the **Employer's** related duties will be reimbursed in accordance with the **Employer's** travel and subsistence provisions.

17.0 MONITORING AND REVIEW OF AGREEMENT

- 17.1 This Agreement will be reviewed on an annual basis. Where appropriate, in response to a particular issue or concern, a review may be requested by either party.
- 17.2 Should the **Employer** or the trade union(s) wish to amend or terminate this Agreement, **three months' written notice** must be given. Negotiations will commence once notification is received.
- 17.3 This agreement is approved and signed on behalf of the **Employer** and recognised trade unions by:

Signature: _____ Date: ____ / ____ / ____
 Position: _____

For and on behalf of Employer

Signature: _____ Date: ____ / ____ / ____
 Position: _____

For and on behalf of NASUWT – The Teachers' Union

Signature: _____ Date: ____ / ____ / ____
 Position: _____

For and on behalf of ASCL (Association of School and College Leaders)

Signature: _____ Date: ____ / ____ / ____
 Position: _____

For and on behalf of ATL (Association of Teachers and Lecturers)

Signature: _____ Date: ____ / ____ / ____
 Position: _____

For and on behalf of GMB

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of NAHT (National Association of Head Teachers)

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of NUT (National Union of Teachers)

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of UNISON

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of UNITE

Appendix A

TRADE UNION DUTIES

Trade union officials will be granted reasonable paid time off during working hours to undertake trade union duties as set out in the ACAS Code of Practice 3 *Time off for Trade Union Duties and Activities (including guidance on time off for union learning representatives)* (2010). Paragraph 13 of the Code give the following examples of trade union duties:

‘13. **The subjects connected with collective bargaining may include one or more of the following:**

- (a) **terms and conditions of employment, or the physical conditions in which workers are required to work.** Examples could include:
 - pay;
 - hours of work;
 - holidays and holiday pay;
 - sick pay arrangements;
 - pensions;
 - learning and training needs;
 - equal opportunities;
 - notice periods;
 - the working environment;
 - operation of digital equipment and machinery;
- (b) **engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers.** Examples could include:
 - recruitment and selection policies;
 - human resources planning;
 - redundancy and dismissal arrangements;
- (c) **allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:
 - job grading;
 - job evaluation;
 - job descriptions;
 - flexible working practices;
 - work-life balance;
- (d) **matters of discipline.** Examples could include:
 - disciplinary procedures;
 - arrangements for representing trade union members at internal interviews;
 - arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

- (e) **trade union membership or non-membership.** Examples could include:
 - representation arrangements;
 - any union involvement in the induction of new workers;
- (f) **facilities for trade union representatives.** Examples could include any agreed arrangements for the provision of:
 - accommodation;
 - equipment;
 - names of new workers to the union;
- (g) **machinery for negotiation or consultation and other procedures.** Examples could include arrangements for:
 - collective bargaining at the employer and/or multi-employer level;
 - grievance procedures;
 - joint consultation;
 - communicating with members;
 - communicating with other union representatives and union full-time officers concerned with collective bargaining with the employer.'

Paragraph 14 of the ACAS Code of Practice (2010) states:

- '14. The duties of a representative of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:
- prepare for negotiations, including attending relevant meetings;
 - inform members of progress and outcomes;
 - prepare for meetings with the employer about matters for which the trade union has only representational rights.'

Appendix B

JOINT UNION TOOLKIT ON DE-DELEGATION FOR LOCAL/DISTRICT UNION REPRESENTATIVES

BACKGROUND INFORMATION

WHAT IS THIS TOOLKIT FOR?

This toolkit of resources agreed by ATL, NAHT, NASUWT and NUT is designed to assist our local and district union representatives to work jointly to achieve two objectives:

1. maximise the number of local authorities (specifically their schools forums) that de-delegate union facility funding (i.e. pool facility funds in local ‘pots’);
2. maximise the number of academies (and other schools with delegated funds) that pay into (i.e. ‘buy back’ into) these local ‘pots’.

WHAT IS ‘DE-DELEGATION’ AND WHY DOES IT MATTER?

The DfE’s 2013-14 Revenue Funding Arrangements introduced a new requirement that essentially requires schools forums in every local authority to annually decide whether a range of school support services, **including but not limited to union facilities**, should be de-delegated into pooled funds (‘pots’) held by the local authority.

The default funding arrangement is that all such funds will be delegated directly to school budgets, so de-delegation requires a positive decision on the part of schools forums **every year**. Typically, schools forums will take these decisions early in the Autumn term so that local authorities can submit their provisional Schools Budget pro forma to the Education Funding Agency during October. Primary and secondary schools forums take separate decisions.

The pooling of facilities time into local pots is integral to long-established funding mechanisms that enable local union officers to negotiate on behalf of and individually represent their members across the whole community of schools in a local authority area. Delegation of such funds seriously undermines these well-established and effective union representation arrangements, replacing them with fragmented school-by-school arrangements.

So we need to maximise the number of schools forums that decide to de-delegate union facility funds.

WHAT DOES ‘BUY BACK’ MEAN AND WHY DOES IT MATTER?

Irrespective of schools forum decisions, for schools that are not maintained by the local authority – such as academy, voluntary-aided and free schools – union facility funds are **automatically delegated**. However, all these schools can nevertheless voluntarily ‘buy back’ into local authority pots. If they do not do so, they will need to make separate arrangements to fund union facilities time at school level. Likewise, where a primary and/or secondary schools forum decides to delegate union facility funds, individual local authority-maintained schools can also voluntarily re-pool these delegated funds by buying back into local authority pots. These buy-back arrangements will sometimes take the form of a service level agreement.

As the number of academies grows, widespread failure to buy back into pooled local authority pots could starve these pots of the funds they need to sustain our well-established and effective mechanisms of local representation.

So wherever funds have been delegated, we need to maximise the number of schools that buy back into pooled local authority pots.

WHAT HAPPENED IN 2013-14?

Before July 2013, the de-delegation of union facility funds represented the *status quo ante* for the vast majority of local authorities.

Thanks to co-ordinated lobbying on the part of ATL, NAHT, NASUWT and NUT local officers, more than seven out of ten local authorities retained the status quo in full and de-delegated union facility funds in both primary and secondary phases. Fewer than one in 20 decided to delegate both primary and secondary phases. However, many authorities that did de-delegate took months to set up a pot mechanism by which schools with delegated funds (i.e. academies) could buy back into. Some others took the opportunity to review/reduce their overall facilities budgets.

Progressively, as these local pot mechanisms were established, increasing numbers of academies and other schools with delegated funds agreed to buy back into them. But again, despite the positive picture across England as a whole, in some authorities the number of schools buying back is still the minority and jeopardises our well-established union representation mechanisms.

WHAT ARE OUR OBJECTIVES FOR 2014-15?

First, we must consolidate the achievements of 2013-14 so that every schools forum that decided to de-delegate last year does so again this year and every school that bought back into local pots continues to do so.

Second, we must target those schools forums that decided to delegate last year and persuade them to change their minds and agree to de-delegate this time around.

Third, irrespective of schools forum decisions, where local authorities have yet to establish a pot mechanism to pool facilities from schools with delegated funds, we must persuade them to do so or else establish an alternative pool mechanism.

Fourth, throughout 2014-15, we must lobby individually all those schools with delegated funds, most especially academies, to persuade them to buy back into local pots.

WHO DO WE NEED TO LOBBY?

The key decisions on de-delegation will be taken by schools forums so you will need to lobby the schools forum members themselves, plus all those who can influence their decision, most especially the headteachers and sometimes chairs of governors who sit on schools forums, and also the local authority officers (and possibly local councillors too) who will advise the forum and may wish to 'recommend' a course of action.

The key decisions on buying back will be taken by individual schools themselves, so you will once again need to lobby individual headteachers and governing bodies (and possibly parents too).

TOOLKIT RESOURCES

There are three elements to our toolkit resources:

1. Making the Case for De-delegation: Appendix C.
2. Making the Case for Buy-back: Appendix D.
3. Making the Wider Case for Trade Union Facilities: Appendix E.

HOW TO USE THESE RESOURCES

Appendix C and D include a suite of template letters agreed nationally by ATL, NAHT, NASUWT and NUT for local use and adaptation. The precise circumstances in each local authority will differ and many of you are likely to have already raised and addressed these matters, either in writing or otherwise. **It should be entirely for local officers to determine whether and how best to use one or more of these letters, to amend as appropriate to reflect precise local circumstances and to determine exactly which individuals they should be sent to.**

Letters should be sent jointly, wherever possible. Local officers should keep their regional/national officers informed about latest developments.

Appendix C

MAKING THE CASE FOR DE-DELEGATION

Schools forums will meet from September to confirm their de-delegation decisions for 2014-15. Local ATL, NAHT, NASUWT and NUT officers should co-ordinate over the Summer so that you are prepared to deploy these resources early in the Autumn term. One of the following circumstances will apply:

- Your schools forum decided to delegate funds last year, in which case your objective must be to change their mind and decide to de-delegate instead this year.
- Your schools forum will have de-delegated last year, in which case your objective is to ensure they maintain the status quo.

We must prioritise and target efforts at those whose minds we need to change this year (i.e. those who delegated funds last year) and in these cases our lobbying efforts may need to be broadened out to approach schools forum members directly and perhaps even further to local councillors, governors and parents.

On the other hand, we must not be complacent about schools forums that de-delegated last year and take for granted that they will do so again, especially if there are significant numbers of schools (e.g. academies) that failed to buy back last year. At the very least, we encourage you to approach the local authority to cascade the appropriate letter.

This appendix A includes three letters to use as follows:

- Letter A1 should be used **for schools forums that de-delegated in 2013-14**, urging them to take the same decision again, and is addressed to the local authority to cascade to forum members or else could be amended and sent directly to the headteacher/governor members of schools forums.
- Letter A2 should be used **for schools forums that delegated in 2013-14**, urging them to de-delegate this time around, and again is addressed to the local authority to cascade to forum members or else could be amended and sent directly to the headteacher/governor members of schools forums.
- Letter A3 should also be used **for schools forums that delegated in 2013-14**, but is addressed to our workplace representatives, urging them to contact and lobby their headteacher/governor members of schools forums.

Appendix D

MAKING THE CASE FOR BUY-BACK

Once schools forums have confirmed their 2014-15 decisions with regard to de-delegation, the focus of your lobbying will need to shift to maximising the number of schools with delegated funds who buy back into pooled local authority pots. This may require some further lobbying of the local authority to establish these pot mechanisms and will almost certainly require lobbying of individual schools, particularly those which refused to buy back last year. Schools can take a decision to buy back at any time in the year, but we need to maximise the number who do so before April as this will directly impact on the facility budget set for the next financial year.

If your school forum voted in favour of de-delegation, the local authority will hold a central fund which will allow facilities time arrangements to continue in respect of local authority schools. Academies will not be included in these arrangements automatically.

If, despite your best efforts, the funding for supply costs has been delegated, your facilities time arrangements could change from April. Without a central fund, all individual schools, including academies, will need to make arrangements to meet the statutory obligations to provide release for representatives to undertake their trade union responsibilities.

Some local authorities have agreed to operate a buy-back arrangement (sometimes in the form of a service level agreement) in respect of trade union facility time, in which schools within its boundaries, including academies, may participate so that individual schools are not required to fund facilities time at school level.

This appendix B includes four letters to use across this range of circumstances as follows:

- Letter B1, addressed to local authorities, should be used **where funds have been fully or partially de-delegated**, urging them to establish buy-back arrangements and offer them to academies (such buy-back arrangements could also be offered to schools in a phase – primary or secondary – where funding has been delegated).
- Letter B2, addressed to local authorities, should be used **where funds have been delegated**, urging them to establish a pooled facilities funding arrangement in which all schools and academies may participate.
- Letter B3 should be used **for academy schools that do not currently buy back**, urging them to participate in buy-back arrangements established by their local authority.
- Letter B4 should be used **for schools to whom funds have been delegated that do not currently buy back**, urging them to participate in buy-back arrangements established by their local authority.

CONVERTING ACADEMIES

Some schools may convert to academy status during the course of 2014-15, in which case the question of buying back into the local authority pot may arise for the first time. The point of transfer is an ideal time to secure this buy-back decision. Accordingly, this appendix B provides two further letters to be used as follows:

- Letter B5, addressed to transferee academies **where local pots exist**, urging them to participate in those pot arrangements.
- Letter B6, addressed to transferee academies **where local pots do not exist**, urging them to either set up school facility arrangements or to lobby the local authority to establish a pot.

Appendix E

MAKING THE WIDER CASE FOR TRADE UNION FACILITIES

The DfE decision to require schools forums to make positive decisions annually in order to maintain de-delegation is part of a wider ideological assault on the legitimacy of trade union facilities being undertaken by government ministers, their ideological outriders in the Trade Union Reform Committee and the Taxpayers' Alliance, and their media bedfellows. This public assault on union facilities often crescendoes during the party conference season, which is exactly when most schools forums will be making their de-delegation decisions.

So we must be prepared to combat any further public and/or political assault on our facility time arrangements, not only defending our legitimate and legal entitlement to union facilities, but also making the positive case for the added value these arrangements provide both employers individually and the economy as a whole.

This appendix C signposts you to an extensive range of the TUC resources and research findings that substantiate this value-added case for union facilities:

- TUC – *The Facts about Facility Time for Union Reps* – October 2011;
- TUC – The value of unions to the UK economy (press release) – January 2012;
- TUC – *Facility time for union reps – separating fact from fiction* – January 2012;
- UNISON/NatCen Social Research – *The Value of Trade Union Facility Time* – June 2012;
- TUC – *How unions make a difference to health and safety: the union effect* – May 2011;
- TUC – *An employer's introduction to trade unions* – 2007;
- TUC Touchstone Pamphlet 8 – *The Road to Recovery: How effective unions can help rebuild the economy* – 2010;
- Department for Business, Enterprise and Regulatory Reform (BERR)/Confederation of Business and Industry (CBI)/TUC – *How workplaces can gain from modern union representation* – May 2009;
- Department of Trade and Industry (DTI) consultation document – *Workplace representatives: a review of their facilities and facility time* – January 2007.

In June 2006, following prior consultation, the Labour Government launched a review of the facilities and facility time provided to workplace representatives as part of its major *Success at Work* initiative. In 2007, the DTI produced a consultation document entitled *Workplace Representatives: a review of their facilities and facility time* presenting the initial findings of that Review.

In its findings, the Review made no recommendations to change the legislative framework. Annex B to the consultation document contained a detailed assessment of the benefits and costs of the existing regulatory framework. The DTI estimated that '*workplace representatives bring an identifiable range of benefits worth £476 million - £1,133 million annually, in addition to which there may be significant other gains from increased productivity. The cost to their employers of providing paid time off and facilities ranges is between an estimated £407 million to £430.4 million annually.*'

The DTI Review also estimated that the potential impact of workplace representatives on the economy through increased productivity may produce 'a more general gain' of somewhere between £3.4b and £10.2b a year.

More specifically, the consultation document included the following DTI estimates of benefits totalling between £476m and £1,113m annually:

- union learning representatives are worth £94m - £156m a year in increased productivity;

- unions helped individuals gain more than 3,500 Skills for Life qualifications and almost 2,000 NVQ achievements at levels 1-3 in 2005/6;
- safety representatives save society between £181m and £578m each year (at 2004 prices) from reductions in lost time due to occupational injuries and work-related illnesses;
- workplace representatives reduce voluntary exit rates by 5-10%, saving employers £72m - £143m a year;
- workplace representatives reduce workplace dismissals by 5-10%, saving employers £107m - £213m a year in fewer dismissals;
- workplace representatives also save business and taxpayers some £22m - £43m annually as a result of fewer tribunal applications.

The 117-page Report is attached and available at <http://webarchive.nationalarchives.gov.uk/20100107175031/http://www.berr.gov.uk/files/file36336.pdf>.

In 2009, the TUC, CBI and BERR produced the tripartite report *Reps in Action: How workplaces can gain from modern union representation* to raise awareness of the positive role that union representatives can play as agents of change as worker representatives or in more specialist roles such as equality, learning or environmental representatives. It contained a joint foreword signed by Brendan Barber, Richard Lambert (CBI) and the Rt Hon Lord Mandelson, then Secretary of State, as well as a series of case studies to show how management and lay union representatives have worked positively together to address a variety of workplace issues. The Report is still available on the Department for Business, Innovation and Skills (BIS) website at <http://www.bis.gov.uk/files/file51155.pdf>.

In 2009, the BIS published a report by David MacLeod and Nita Clarke (of UNISON) reviewing the evidence on employee engagement and its potential benefits for organisations and employees. When asked by the Secretary of State whether a wider take-up of engagement approaches could impact positively on UK competitiveness and performance as part of the country's efforts to come through the current economic difficulties, the authors' response was 'an unequivocal yes'.

While the Review underplayed the actual and potential role of unions in securing effective employee engagement, the authors found many examples since 2008 of companies and organisations where performance and profitability had been transformed by employee engagement and examples showing a clear correlation between improving engagement and improving performance. The full 157-page Report *Engaging for Success: enhancing performance through employee engagement* is available at <http://www.bis.gov.uk/files/file52215.pdf>.

Clearly, the impact that union representatives can have on productivity can be significant. Some of the most compelling and best documented evidence comes from the field of health and safety, although most of the statistical evidence tends to be at the macroeconomic level rather than that of the individual workplace or employer.

Appendix F

ACAS CODE OF PRACTICE

This code revises the Acas Code of Practice *Time Off for Trade Union Duties and Activities* which came into effect on 27 April 2003. This revised code is issued under Section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and comes into force by order of the Secretary of State on 1 January 2010.

Introduction

1. Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (ACAS) has a duty to provide practical guidance on the time off to be permitted by an employer:
 - (a) to a trade union official in accordance with section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992; and
 - (b) to a trade union member in accordance with section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 199 of the Act, as amended by the Employment Act 2002, also provides for ACAS to issue practical guidance on time off and training for Union Learning Representatives. This Code, which replaces the Code of Practice issued by ACAS in 2003, is intended to provide guidance and advice on the role and responsibilities of employee representatives and is provided in two ACAS Guides: *Trade union representation in the workplace: a guide to managing time off, training and facilities* and *Non-union representation in the workplace: a guide to managing time off, training and facilities*.

TERMINOLOGY

2. In this Code the term ‘trade union official’ is replaced by ‘union representative’. In practice there is often confusion between an ‘official’ and an ‘officer’ of a union and the term ‘representative’ is commonly used in practice. Section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 defines an official as ‘(a) an officer of the union or of a branch or section of the union, or (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent’. Section 181 (1) of the same Act defines a ‘representative’, for the purposes of sections 181 – 185 of the Act, as ‘an official or other person authorised by the union to carry on such collective bargaining’.

In this Code a union representative means an employee who has been elected or appointed in accordance with the rules of the independent union to be a representative of all or some of the union’s members in the particular company or workplace, or agreed group of workplaces where the union is recognised for collective bargaining purposes. This is intended to equate with the legal term ‘trade union official’ for the purposes of this Code.

The term ‘union full-time officer’ in this Code means a trade union official who is employed by an independent trade union to represent members in workplaces, or groups of workplaces, where the union is recognised for collective bargaining purposes.

A ULR is an employee who is a member of an independent trade union recognised by the employer who has been elected or appointed in accordance with the rules of the union to be a learning representative of the union at the workplace.

THE BACKGROUND

3. Union representatives have had a statutory right to reasonable paid time off from employment to carry out trade union duties and to undertake trade union training since the Employment Protection

Act 1975. Union representatives and members were also given a statutory right to reasonable unpaid time off when taking part in trade union activities. Union duties must relate to matters covered by collective bargaining agreements between employers and trade unions and relate to the union representative's own employer, unless agreed otherwise in circumstances of multi-employer bargaining, and not, for example, to any associated employer. All the time-off provisions were brought together in sections 168 – 170 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 43 of the Employment Act 2002 added a new right for ULRs to take paid time off during working hours to undertake their duties and to undertake relevant training. The rights to time off for the purpose of carrying out trade union duties, and to take time off for training, were extended to union representatives engaged in duties related to redundancies under Section 188 of the amended 1992 Act and to duties relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

GENERAL PURPOSE OF THE CODE

4. The general purpose of the statutory provisions and this Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work.

STRUCTURE OF THE CODE

5. Section 1 of this Code provides guidance on time off for trade union duties. Section 2 deals with time off for training of trade union representatives and offers guidance on sufficient training for ULRs. Section 3 considers time off for trade union activities. In each case the amount and frequency of time off, and the purposes for which and any conditions subject to which time off may be taken, are to be those that are reasonable in all the circumstances. Section 4 describes the responsibilities which employers and trade unions share in considering reasonable time off. Section 5 notes the advantages of reaching formal agreements on time off. Section 6 deals with industrial action and Section 7 with methods of appeal.
6. The annex to this Code reproduces the relevant statutory provisions on time off. To help differentiate between these and practical guidance, the summary of statutory provisions relating to time off which appears in the main text of the Code is in bold type. Practical guidance is in ordinary type. While every effort has been made to ensure that the summary of the statutory provisions included in this Code is accurate, only the courts can interpret the law authoritatively.

STATUS OF THE CODE

7. **The provisions of this Code are admissible in evidence in proceedings before an Employment Tribunal relating to time off for trade union duties and activities. Any provisions of the Code which appear to the Tribunal to be relevant shall be taken into account. However, failure to observe any provision of the Code does not of itself render a person liable to any proceedings.**

Section 1

Time off for Trade Union Duties

Union representatives undertake a variety of roles in collective bargaining and in working with management, communicating with union members, liaising with their trade union and in handling individual disciplinary and grievance matters on behalf of employees. There are positive benefits for employers, employees and for union members in encouraging the efficient performance of union representatives' work, for example in aiding the resolution of problems and conflicts at work. The role can be both demanding and complex. In order to perform effectively, union representatives need to have reasonable paid time off from their normal job in appropriate circumstances.

ENTITLEMENT

8. **Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to carry out certain trade union duties.**
9. **Union representatives are entitled to time off where the duties are concerned with:**
 - negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the employer;
 - any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform;
 - the receipt of information from the employer and consultation by the employer under section 188 TULR(C)A, related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer;
 - negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer; or
 - the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Matters falling within section 178(2) TULR(C)A are listed in the subheadings of paragraph 3 below.

10. **The Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a) requires that employers allow union health and safety representatives paid time, as is necessary, during working hours, to perform their functions.**

Further advice on time-off provisions for health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance 'Consulting workers on health and safety'. This is not covered in this Acas Code.

11. **An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have no statutory right to time off to undertake any duties except that of accompanying a worker at a disciplinary or grievance hearing (see para 20).**

EXAMPLES OF TRADE UNION DUTIES

12. **Subject to the recognition or other agreement, trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with the subjects of collective bargaining.**
13. **The subjects connected with collective bargaining may include one or more of the following:**
 - (a) **terms and conditions of employment, or the physical conditions in which workers are required to work.** Examples could include:
 - pay;
 - hours of work;
 - holidays and holiday pay;

- sick pay arrangements;
- pensions;
- learning and training;
- equality and diversity;
- notice periods;
- the working environment;
- operation of digital equipment and other machinery;
- (b) **engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers.** Examples could include:
 - recruitment and selection policies;
 - human resource planning;
 - redundancy and dismissal arrangements;
- (c) **allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:
 - job grading;
 - job evaluation;
 - job descriptions;
 - flexible working practices;
 - work-life balance;
- (d) **matters of discipline.** Examples could include:
 - disciplinary procedures;
 - arrangements for representing or accompanying employees at internal interviews;
 - arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;
- (e) **trade union membership or non-membership.** Examples could include:
 - representational arrangements;
 - any union involvement in the induction of new workers;
- (f) **facilities for trade union representatives.** Examples could include any agreed arrangements for the provision of:
 - accommodation;
 - equipment;
 - names of new workers to the union;
- (g) **machinery for negotiation or consultation and other procedures.** Examples could include arrangements for:
 - collective bargaining at the employer and/or multi-employer level;

- grievance procedures;
 - joint consultation;
 - communicating with members;
 - communicating with other union representatives and union full-time officers concerned with collective bargaining with the employer.
14. The duties of a representative of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:
- prepare for negotiations, including attending relevant meetings;
 - inform members of progress and outcomes;
 - prepare for meetings with the employer about matters for which the trade union has only representational rights.
15. **Trade union duties will also be related to the receipt of information and consultation related to the handling of collective redundancies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days, and where the Transfer of Undertakings (Protection of Employees) Regulations apply but also including the negotiations with a view to entering an agreement under regulation 9 of the Regulations (variation of contract in insolvency).**

UNION LEARNING REPRESENTATIVES

16. **Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a ULR, provided that the union has given the employer notice in writing that the employee is a learning representative of the trade union and the training condition is met (see paras 28 – 33 for further information on the training condition). The functions for which time off as a ULR is allowed are:**
1. **analysing learning or training needs;**
 2. **providing information and advice about learning or training matters;**
 3. **arranging learning or training;**
 4. **promoting the value of learning or training;**
 5. **consulting the employer about carrying on any such activities;**
 6. **preparation to carry out any of the above activities; and**
 7. **undergoing relevant training.**

In practice, the roles and responsibilities of ULRs will often vary by union and by workplace but must include one or more of these functions. In some cases it may be helpful if ULRs attend meetings concerned with agreeing and promoting learning agreements. Employers may also see it in their interests to grant paid time off for these representatives to attend meetings with external partners concerned with the development and provision of workforce training. Recognition needs to be given to the varying roles of ULRs where the postholder also undertakes additional duties as a union representative.

Many employers have in place well-established training and development programmes for their employees. ULRs should liaise with their employers to ensure that their respective training activities complement one another and that the scope for duplication is minimised.

PAYMENT FOR TIME OFF FOR TRADE UNION DUTIES

18. An employer who permits union representatives time off for trade union duties must pay them for the time off taken. The employer must pay either the amount that the union representative would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do.

The calculation of pay for the time taken for trade union duties should be undertaken with due regard to the type of payment system applying to the union representative including, as appropriate, shift premia, performance-related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

19. There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works flexible hours, such as night shift, but needs to perform representative duties during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable.

TIME OFF TO ACCOMPANY WORKERS AT DISCIPLINARY OR GRIEVANCE HEARINGS

20. Trade union representatives are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at a disciplinary or grievance hearing so long as they have been certified by their union as being capable of acting as a worker's companion. The right to time off in these situations applies regardless of whether the certified person belongs to a recognised union or not although the worker being accompanied must be employed by the same employer. Time off for a union representative or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.

Section 2

Training of union representatives in aspects of employment relations and employee development

Training is important for union representatives to enable them to carry out their duties effectively. Training should be available both to newly appointed and to more established union representatives. It is desirable, from time to time, where resources permit it, for joint training and development activities between union representatives and managers to occur.

ENTITLEMENT

21. Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training in aspects of industrial relations relevant to the carrying out of their trade union duties. These duties must be concerned with:
- negotiations with the employer about matters which fall within section 178(2) TULR(C)A and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or
 - any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform; or
 - matters associated with information and consultation concerning collective redundancy and the Transfer of Undertakings, and the negotiation of an agreement under Regulation 9 of the Transfer of Undertakings (Protection of Employees) Regulations.

Matters falling within section 178(2) TULR(C)A are set out in paragraph 13 above.

22. **The Safety Representatives and Safety Committees Regulations (NB: SEE Appendix G) 1977 regulation 4(2)(b) requires that employers allow union health and safety representatives to undergo training in aspects of their functions that is ‘reasonable in all the circumstances’.**

Further advice on the training of health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance ‘Consulting workers on health and safety’. NB: This is not covered in this Acas Code.

23. **Employees who are trade union Learning Representatives are also permitted reasonable time off during working hours to undergo training relevant to their functions as a ULR.**

WHAT IS RELEVANT EMPLOYMENT RELATIONS TRAINING?

24. **Training should be in aspects of employment relations relevant to the duties of a union representative.** There is no one recommended syllabus for training, as a union representative’s duties will vary according to:

- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement;
- the structure of the union;
- the role of the union representative;
- the handling of proposed collective redundancies or the transfer of undertakings.

25. **The training must also be approved by the Trades Union Congress or by the independent trade union of which the employee is a union representative.**

26. Union representatives are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular, employers should be prepared to consider releasing union representatives for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:

- for training courses to develop the union representative’s skills in representation, accompaniment, negotiation and consultation;
- for further training, particularly where the union representative has special responsibilities, for example in collective redundancy and transfer of undertakings circumstances;
- for training courses to familiarise or update union representatives on issues reflecting the developing needs of the workforce they represent;
- for training where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised, or where significant changes in the organisation of work are being contemplated;
- for training where legal change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements;
- for training where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings.

27. E-learning tools, related to the role of union representatives, should be used where available and appropriate. However, their best use is as an additional learning aid rather than as a replacement to attendance at approved trade union and Trades Union Congress training courses. Time needs to be given during normal working hours for union representatives to take advantage of e-learning where it is available.

TRAINING FOR ULRs

28. **Employees who are members of an independent trade union recognised by the employer are entitled to reasonable paid time off to undertake the functions of a ULR. To qualify for paid time off the member must be sufficiently trained to carry out duties as a learning representative:**
- either at the time when their trade union gives notice to their employer in writing that they are a learning representative of the trade union; or
 - within six months of that date.
29. **In the latter case, the trade union is required to give the employer notice in writing that the employee will be undergoing such training and when the employee has done so, to give the employer notice of that fact. During the six-month period in which he or she is undergoing this training, the ULR must be allowed time off to perform their duties.** It should be confirmed by the union in a letter that the training undertaken is sufficient to allow the Learning Representative to undertake their role and it is good practice for the union to give details of the training which has been completed and any previous training that has been taken into account. In the interests of good practice, the six-month qualifying period may be extended, with agreement, to take into account any significant unforeseen circumstances such as prolonged absence from work due to ill health, pregnancy, bereavement or unavoidable delays in arranging an appropriate training course.
30. To satisfy this training requirement, an employee will need to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the following areas of activity relevant to their duties as a ULR.

analysing learning or training needs;

- this could, for example, include understanding the different methods for identifying learning interests or needs, being able to effectively identify and record individual learning needs or being able to draw up a plan to meet identified learning requirements.

providing information and advice about learning or training matters;

- including, for example, the development of communication and interviewing skills;
- knowledge of available opportunities, in order to be able to provide accurate information to members about learning opportunities within and outside the workplace;
- the ability to signpost members to other sources of advice and guidance where additional support is needed; for example, basic skills tutors or fuller in-depth professional career guidance.

arranging and supporting learning and training;

- for example, obtaining and providing information on learning opportunities including e-learning where available, supporting and encouraging members to access learning opportunities and helping to develop and improve local learning opportunities.

promoting the value of learning and training;

- some examples of this activity could be: understanding current initiatives for the development of learning and skills in the workplace, promoting the value of learning to members and within trade union networks and structures, working with employers to meet the learning and skill needs of both individuals and the organisation, and appreciating the value of learning agreements and how they may be developed.

31. An employee could demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of these areas of activity by:
- completing a training course approved by the Trades Union Congress or by the independent trade union of which the employee is a ULR; or by
 - showing that they have previously gained the relevant expertise and experience to operate effectively as a learning representative.

In the latter case, previous experience and expertise gained in areas such as teaching, training, counselling, providing careers advice and guidance or human resource development, may well be relevant, as may periods of extensive on-the-job training and experience gained in shadowing an experienced ULR.

32. Reasonable time off should also be considered for further training to help ULRs develop their skills and competencies.
33. Although not required by law, it is recognised that there would be clear advantages both to the individual and the organisation if training undertaken leads to a recognised qualification standard.

PAYMENT FOR TIME OFF FOR TRAINING

34. **An employer who permits union representatives or ULRs time off to attend relevant training must pay them for the time off taken. The employer must pay either the amount that the union representative or the ULR would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do.**

The calculation of pay for the time taken for training should be undertaken with due regard to the type of payment system applying to the union representative and ULR including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets, it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

35. **There is no statutory requirement to pay for time off where training is undertaken at a time when the union representative or ULR would not otherwise have been at work unless the union representative or ULR works flexible hours, such as night shift, but needs to undertake training during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable.**

Section 3

Time off for trade union activities

To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured and help is given to promote effective communication between union representatives and members in the workplace.

ENTITLEMENT

36. **An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a ULR (provided those services are services for which the ULR is entitled to time off).**

WHAT ARE EXAMPLES OF TRADE UNION ACTIVITIES?

37. The activities of a **trade union member** can be, for example:
- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer. Where relevant, and with the employer's agreement, this can include attending such workplace meetings at the employer's neighbouring locations.
 - meeting full-time officers to discuss issues relevant to the workplace;
 - voting in union elections;
 - having access to services provided by a ULR.
38. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:
- branch, area or regional meetings of the union where the business of the union is under discussion;
 - meetings of official policy-making bodies such as the executive committee or annual conference;
 - meetings with full-time officers to discuss issues relevant to the workplace.
39. **There is no right to time off for trade union activities which themselves consist of industrial action.**

PAYMENT FOR TIME OFF FOR TRADE UNION ACTIVITIES

40. Paragraphs 18 and 19 set out the statutory entitlement to payment for time off to undertake trade union **duties**.
41. **There is no statutory requirement that union members or representatives be paid for time off taken on trade union activities.** Nevertheless, employers may want to consider payment in certain circumstances, for example to ensure that workplace meetings are fully representative or to ensure that employees have access to services provided by ULRs.

Section 4

The responsibilities of employers and trade unions

Employers, trade unions, union representatives and line managers should work together to ensure that time off provisions, including training, operate effectively and for mutual benefit. Union representatives need to be able to communicate with management, each other, their trade union and employees. To do so they need to be able to use appropriate communication media and other facilities.

GENERAL CONSIDERATIONS

42. **The amount and frequency of time off should be reasonable in all the circumstances.** Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:
- the size of the organisation and the number of workers;
 - the production process;
 - the need to maintain a service to the public;
 - the need for safety and security at all times.
43. Employers in turn should have in mind the difficulties for trade union representatives and members in ensuring effective representation and communications with, for example:

- shift workers;
 - part-time workers;
 - home workers;
 - teleworkers or workers not working in a fixed location;
 - those employed at dispersed locations;
 - workers with particular domestic commitments including those on leave for reasons of maternity, paternity or care responsibilities;
 - workers with special needs such as disabilities or language requirements.
44. For time off arrangements to work satisfactorily trade unions should:
- ensure that union representatives are aware of their role, responsibilities and functions;
 - inform management, in writing, as soon as possible of appointments or resignations of union representatives;
 - ensure that union representatives receive any appropriate written credentials promptly;
 - ensure that employers receive details of the functions of union representatives where they carry out special duties or functions.
45. Employers should ensure that, where necessary, work cover and/or work load reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.
46. While there is no statutory right for facilities for union representatives, except for representatives engaged in duties related to collective redundancies and the Transfer of Undertakings, employers should, where practical, make available to union representatives the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague union representatives and full-time officers. Where resources permit the facilities should include:
- accommodation for meetings which could include provision for ULRs and a union member(s) to meet to discuss relevant training matters;
 - access to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet;
 - the use of noticeboards;
 - where the volume of the union representative's work justifies it, the use of dedicated office space;
 - confidential space where an employee involved in a grievance or disciplinary matter can meet their representative or to discuss other confidential matters;
 - access to members who work at a different location;
 - access to e-learning tools where computer facilities are available.
47. When using facilities provided by the employer for the purposes of communication with their members or their trade union, union representatives must comply with agreed procedures both in respect of the use of such facilities and also in respect of access to and use of company information. The agreed procedures will be either those agreed between the union and the employer as part of an agreement on time off (see section 6) or comply with general rules applied to all employees in the organisation. In particular, union representatives must respect and maintain the confidentiality of information they are given access to where, the disclosure would seriously harm the functioning

of, or would be prejudicial to, the employer's business interests. The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic. Union representatives should understand that unauthorised publication risks damaging the employer's business, straining relations with the representative body concerned, possible breaches of individual contracts of employment and, in extreme cases such as unauthorised publication of price sensitive information, the commission of criminal offences.

48. Union representatives will have legitimate expectations that they and their members are entitled to communicate without intrusion in the form of monitoring by their employer. Rules concerning the confidentiality of communications involving union representatives should be agreed between the employer and the union. Guidance on this is set out in paragraphs 49 and 57 below.
49. Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. They should not normally carry out regular or random monitoring of union emails. Only in exceptional circumstances may employers require access to communications but such access should be subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998, whether a person is a member of a trade union or not is defined as sensitive personal data. This also applies to data concerning individuals, for example communications concerned with possible or actual grievance and disciplinary issues. There are therefore very strict provisions on how such data can be used and monitored in compliance with the law.

REQUESTING TIME OFF

50. Trade union representatives and members requesting time off to pursue their duties or activities, or to access the services of a ULR should provide management, especially their line manager, with as much notice as practically possible concerning:
 - the purpose of such time off, while preserving personal confidential information relating to individuals in grievance or disciplinary matters;
 - the intended location;
 - the timing and duration of time off required.
51. Union representatives should minimise business disruption by being prepared to be as flexible as possible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult for colleagues or managers to provide cover for them in their absence. Equally, employers should recognise the mutual obligation to allow union representatives to undertake their duties.
52. In addition, union representatives who request paid time off to undergo relevant training should:
 - give at least a few weeks' notice to management of nominations for training courses;
 - provide details of the contents of the training course.
53. When deciding whether requests for paid time off should be granted, consideration would need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or the provision of service. Consideration should also be given to allowing ULRs access to a room in which they can discuss training in a confidential manner with an employee. Similarly, managers and unions should seek to agree a mutually convenient time which minimises the effect on production or services. Where workplace meetings are requested, consideration should be given to holding them, for example:
 - towards the end of a shift or the working week;
 - before or after a meal break.

54. For their part line managers should be familiar with the rights and duties of union representatives regarding time off. They should be encouraged to take reasonable steps as necessary in the planning and management of representatives' time off and the provision of cover or work load reduction, taking into account the legitimate needs of such union representatives to discharge their functions and receive training efficiently and effectively.
55. Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect.

Section 5

Agreements on time off

To take account of the wide variety of circumstances and problems which can arise, there can be positive advantages for employers and trade unions in establishing agreements on time off in ways that reflect their own situations. It should be borne in mind, however, that the absence of a formal agreement on time off does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede statutory entitlement to time off.

56. A formal agreement can help to:
 - provide clear guidelines against which applications for time off can be determined;
 - establish realistic expectations on the part of union representatives and managers;
 - avoid misunderstanding;
 - facilitate better planning;
 - ensure fair and reasonable treatment.
57. Agreements should specify:
 - the amount of time off permitted, recognising that this will vary according to the fluctuations in demand on the union representatives' role;
 - the occasions on which time off can be taken, including meetings with management, meetings with other union representatives, time needed to prepare for meetings, communicating with members and their trade union, time to undertake e-learning if appropriate and to attend approved training events;
 - in what circumstances time off will be paid;
 - arrangements for taking time off at short notice;
 - how pay is to be calculated;
 - to whom time off will be paid;
 - the facilities and equipment to be provided and limits to their use, if any;
 - arrangements for ensuring confidentiality of communications involving union representatives. These should include agreed rules on the use of data and the exceptional cases where monitoring may be necessary, for example in cases of suspected illegal use, specifying the circumstances where such monitoring may be undertaken and the means by which it is to be done, for example by company IT or security personnel;
 - the role of line managers in granting permission to legitimate requests for time off and, where appropriate and practical, ensuring that adequate cover or workload reductions are provided;
 - the procedure for requesting time off;

- the procedure for resolving grievances about time off.
58. In addition, it would be sensible for agreements to make clear:
- arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities;
 - how and in what circumstances payment might be made to shift and part-time employees undertaking trade union duties outside their normal working hours.
59. Agreements for time off and other facilities for union representation should be consistent with wider agreements which deal with such matters as constituencies, number of representatives and the election of officials.
60. The operation of time-off agreements or arrangements should be jointly reviewed by the parties from time to time.
61. In smaller organisations, it might be thought more appropriate for employers and unions to reach understandings about how requests for time off are to be made and more broadly to agree flexible arrangements which can accommodate their particular circumstances.

Section 6

Industrial action

62. Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be permitted for this purpose, particularly where there is a dispute. **There is no right to time off for trade union activities which themselves consist of industrial action.** However, where a union representative is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the union representatives should apply.

Section 7

Resolving disputes

There is advantage in agreeing ways in which disputes concerning time-off arrangements, including training and access to facilities, can be settled and any appropriate procedures to resolve disputes should be followed.

63. Every effort should be made to resolve any dispute or grievance in relation to time off work for union duties or activities. **Where the grievance remains unresolved, union representatives, ULRs or members have a right to complain to an employment tribunal that their employer has failed to allow reasonable time off or, in the case of a ULR or union representative, has failed to pay for all or part of the time off taken. Such complaints may be resolved by conciliation by Acas or through a compromise agreement and, if this is successful, no tribunal hearing will be necessary.** Acas assistance may also be sought without the need for a formal complaint to a tribunal.

Annex – The law on time off for trade union duties and activities

SECTION 168 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992, STATES:

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with –
- (a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer; or

- (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union; or
 - (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 2006; or
 - (d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer; or
 - (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.
- (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations –
- (a) relevant to the carrying out of such duties as are mentioned in subsection (1); and
 - (b) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.
- (4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

SECTION 168A OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992 STATES

- (1) An employer shall permit an employee of his who is –
- (a) a member of an independent trade union recognised by the employer; and
 - (b) a learning representative of the trade union, to take time off during his working hours for any of the following purposes.
- (2) The purposes are –
- (a) carrying on any of the following activities in relation to qualifying members of the trade union;
 - (i) analysing learning or training needs;
 - (ii) providing information and advice about learning or training matters;
 - (iii) arranging learning or training; and
 - (iv) promoting the value of learning or training,
 - (b) consulting the employer about carrying on any such activities in relation to such members of the trade union;
 - (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Subsection (1) only applies if –
- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union; and

- (b) the training condition is met in relation to him.
- (4) The training condition is met if –
 - (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact;
 - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training; or
 - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee.
- (6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes –
 - (a) undergoing training which is relevant to his functions as a learning representative; and
 - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union –
 - (a) who are employees of the employer of a description in respect of which the union is recognised by the employer; and
 - (b) in relation to whom it is the function of the ULR to act as such.
- (11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.

**SECTION 169 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
STATES:**

- (1) An employer who permits an employee to take time off under section 168 or 168A shall pay him for the time taken off pursuant to the permission.
- (2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.

- (3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

- (4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but –
- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period; and
 - (b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (5) An employee may present a complaint to an employment tribunal that his employer has failed to pay him in accordance with this section.

SECTION 170 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992 STATES:

- (1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in –
- (a) any activities of the union; and
 - (b) any activities in relation to which the employee is acting as a representative of the union.
- (2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
- (2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.
- (2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.
- (4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (5) For the purposes of this section –
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules; and

- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.

SECTION 178(1) – (3) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992, STATES:

- (1) In this Act ‘collective agreement’ means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters specified below; and ‘collective bargaining’ means negotiations relating to or connected with one or more of those matters.
- (2) The matters referred to above are –
 - (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
 - (b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
 - (c) allocation of work or the duties of employment as between workers or groups of workers;
 - (d) matters of discipline;
 - (e) a worker’s membership or non-membership of a trade union;
 - (f) facilities for officials of trade unions; and
 - (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers’ associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.
- (3) In this Act ‘recognition’, in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and ‘recognised’ and other related expressions shall be construed accordingly.

SECTION 173(1) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992, STATES:

For the purposes of sections 168, 168A and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.

SECTION 119 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992 STATES:

‘official’ means –

- (a) an officer of the union or of a branch or section of the union; or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.

Appendix G

SAFETY REPRESENTATIVES – TIME OFF AND FACILITIES

REPRESENTATIVES' FUNCTIONS AND EMPLOYER DUTIES

FACILITIES AND TIME OFF FOR SAFETY REPRESENTATIVES

Section 2(6) of the Health and Safety at Work etc. Act 1974 requires employers to consult with safety representatives 'with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.' Under section 2(4) safety representatives are required to represent the employees in those consultations. The Safety Representatives and Safety Committees Regulations 1977 (SRSC) identify the **functions** of safety representatives and stipulate the employer's **duties** towards safety representatives so that the Act is implemented.

FUNCTIONS

SRSC Regulations 4 and 4A detail these statutory functions, which can be grouped under a number of main headings:

Investigative: to investigate potential hazards, dangerous occurrences, the causes of accidents and complaints by employees.

Inspections: to inspect the workplace by regular quarterly inspections and to reinspect when any remedial work has been completed; where there has been a reportable injury, dangerous occurrence or case of disease, to inspect and take copies of documents relating to the health and safety of employees.

Representative: to make representations to the employer on both specific issues or on general matters relating to health and safety in the workplace; to attend meetings of the safety committee; to represent issues to inspectors of the Health and Safety Executive (HSE) or other enforcing authority when they visit the workplace; and to receive information from such inspectors.

Consultation: to be consulted in good time on: the introduction of measures in the workplace that may substantially affect employees' health and safety; the nominations of competent persons to do risk assessments, take charge in emergencies etc.; the provision of information about health and safety to staff; how training is planned and organised; and the consequences of the introduction of any new technology.

TIME OFF

Employer duties

The provision in SRSC Reg 4(2) is as follows:

An employer **shall** permit a safety representative to take **such time off** with pay during the employees' working hours **as shall be necessary** for the purposes of:

- a) performing his functions under the Health and Safety at Work Act 1974 S2(4) and SRSC Regulation 4(1);
- b) undergoing such training in aspects of those functions as may be reasonable in all the circumstances.

This duty is without restriction or qualification; it is not 'reasonable' time off, it is 'such time-off... as shall be necessary.' It is better to talk about time off in relation to the employer's duty in this respect, rather than emphasising 'Safety Representatives' rights'. Rights can easily be ignored; duties are more clearly understood by employers and can be enforced.

One of the main problems that arises is the qualification 'reasonable in all the circumstances' applied to time off for trade union representatives in Section 168(3) of the Trade Union and Labour Relations

(Consolidation) (TULR(C)) Act 1992. This is commonly assumed by employers to include safety representatives, so some employers assert that this ‘reasonableness’ test also qualifies their duty to permit safety representatives to take time off. **This is NOT the case.** The duty imposed on the employer is absolute.

Training

In the case of permitting release for training, the word ‘reasonable’ refers to the nature, content and appropriateness of training, **NOT** to the employer’s duty to release the safety representative from work. The employer may temporarily postpone permission if there would be operational difficulties caused by the absence from work – for example, if there was no-one available to cover the representative’s normal job whilst they were attending the course. But, they cannot use this excuse continuously – to do so would deprive the representative of their legal right to be trained. If permission is refused for this kind of reason for one occasion, then that would be considered sufficient notice to the employer to enable them to make suitable arrangements to cover the representative’s release for a course running, say, three months later.

Enforcement of duty to provide time off and training

Safety representatives can make a complaint to an Employment Tribunal (ET) if the employer either refuses time off or fails to pay the representative for the time off or deducts a proportion of salary (SRSC Regulation 11). This needs to be done within your union’s own procedures, so check what these are. The promise that an ET application will be made is often enough to encourage management to observe their statutory duty. There are time limits for submitting claims to ETs (three months), so remember to take advice from your union on this too. From 29 July, claimants who wish to take a claim to a tribunal or appeal tribunal will have to pay a fee. An initial fee will be paid to issue a claim and a further fee will be payable if the claim proceeds to hearing. There are two levels of fee which will depend on the type of claim.

FACILITIES AND ACCESS TO INFORMATION

Regulation 4A(2) of the SRSC Regulations places an absolute duty on every employer to ‘... provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions...’.

Regulations 5(3) and 6(2) also impose the same duty on the employer, specifically in relation to workplace inspections and the investigation of incidents, injuries and occupational diseases.

‘Reasonably require’ qualifies the representative’s needs, **NOT** what the employer has to provide. So the assistance and facilities required must relate to health, safety and welfare matters that affect your members. For example, a request for information about the ventilation regulations in coal mines would not be a reasonable request for a university safety representative, but HSE guidance on laboratories would. Access to HSE guidance, approved codes of practice and other publications would be covered, as would copies of relevant HSE research reports.

Facilities

The minimum facilities a safety representative is likely to require include:

- secure storage for documents and records;
- somewhere to talk to members in private;
- access to telephones, fax, photocopiers, e-mail etc.;
- computers and printers;
- trade union noticeboard;

- a library to store information that can be easily accessed.

Depending on the hazards and risks your members are exposed to, additional specific facilities relevant to health and safety and welfare will be needed:

- access to monitoring and testing equipment. For example, noise and light meters, dust sampling equipment;
- a camera;
- specialist information, e.g. books, journals, online subscriptions. What the employer uses should be available to you as a minimum;
- information from suppliers and manufacturers of substances and equipment;
- copies of laws and guidance and other HSE and general health and safety publications;
- use of outside advisors;
- ready access to employer information, policies etc.

Information

SRSC Regulation 7 imposes two separate duties on employers in respect of the provision of information. Regulation 7(1) says that safety representatives shall be entitled to inspect, and take copies of, any document the employer is required to keep by law, provided they give the employer reasonable notice. To keep can also mean to create. So, for example, the employer is legally required to record the main points of a risk assessment where there are more than five people employed. That record is a document and therefore safety representatives can ask the employer to give them a copy of it. Similarly, a reportable incident under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 is to be reported by sending the HSE a form and safety representatives are therefore entitled to a copy of this form.

In addition, employers shall make available the information within their knowledge related to health and safety that is necessary to enable the representative to fulfil their statutory functions. Such documents might include plans and any proposed changes, technical information, statistical records relating to health, incidents and injuries, the results of surveys (stress or bullying, for example) or monitoring exercises and any other information the representative may define as appropriate.

ENFORCEMENT OF DUTY TO PROVIDE FACILITIES AND ACCESS TO INFORMATION

This duty is enforced by the HSE although recent guidance issued by the HSE has stated that failure by the employer to do so is NOT considered to be a 'material breach'. See below.

CONSULTATION

SRSC Reg 4A requires employers to consult with safety representatives, in good time, on the introduction of measures in the workplace that may substantially affect: employees' health and safety; the nominations of competent persons to do risk assessments, take charge in emergencies etc.; the provision of information about health and safety to staff; how training is planned and organised; and the consequences of the introduction of any new technology.

The HSE has now reissued its guidance on the enforcement of the employer's duty to consult with employees. This can be found at www.hse.gov.uk/foi/internalops/fod/inspect/enforcement-consultation-regs.pdf.

In the document, the HSE reiterates that *'consultation with workers is an essential element of successful health and safety management and the development of a positive health and safety culture. Inspectors should take all available opportunities to remind employers of their legal duties to consult.'*

The HSE also instructs Inspectors to read this document in conjunction with their document *Managing for Health and Safety Guidance for regulatory staff on the practice of assessing health & safety management*, specifically the sections on collecting evidence to support enforcement activity. This document can be found at www.hse.gov.uk/managing/regulators/regulators.pdf.

CHANGES TO HSE ENFORCEMENT

The HSE now operates a Fee for Intervention (FFI) cost recovery scheme, which came into effect on 1 October 2012. Where an HSE Inspector identifies a ‘material breach’ in how employers deal with health and safety, it will charge a fee for the work the Inspector has to undertake to achieve employer compliance. Such work will include: the visit that discovered the breach and any associated work that follows, such as serving a notice, writing letters or giving advice and guidance; evidence-gathering for a prosecution; any communications involved with the case; research work, getting specialist assistance etc. The HSE will charge £124 per hour for an Inspector’s time, and hopes to recover some of that to offset the recent 35% funding cuts imposed by government. We will see if that happens.

The HSE has published guidance at www.hse.gov.uk/pubns/hse47.htm which outlines what, in the HSE’s opinion, would constitute a ‘material breach’. The examples of ‘material breaches’ given in the document do **not** include material breaches such as:

- failing to undertake a suitable and sufficient risk assessment or to give employees information about its findings unless that failure is in respect of a vulnerable person, or of a significant risk;
- failure to give a safety representative such assistance as they reasonably require to undertake their functions;
- failure to give a safety representative a copy of a document the law requires the employer to keep when requested;
- failure to make available to the safety representative any information about health and safety relevant to the workplace, within the employer’s knowledge, WITHOUT having to be asked; and
- failure to consult, in good time, over a wide range of health and safety matters.

So is there anything useful that health and safety representatives can get out of this development? Well, for a start, we can remind our employers that bad behaviour might cost them in the future, even though it does not at present. And even if failure to comply with many of the duties under the SRSC Regulations has not been deemed to be a material breach we can still make a complaint to the HSE where there is evidence of employers not complying.

REPORTING A COMPLAINT TO THE HSE

Some of us have kicked up about the HSE hiding its contact details. This is what it now says on the HSE website. They have, apparently, rediscovered a telephone number – 0300 003 1647 available during normal office hours. If you call this number you will be asked to provide:

- your name, address and contact details;
- the name and address of the workplace or activity you are concerned about;
- a description of your concern, including who is at risk and why, if the risk is happening now, how long it is likely to go on for, how often it happens and when and where any incident occurred; and
- details about what you have done to try and resolve the issue.

This is then what the HSE says will happen:

First, we will check that the complaint relates to a work activity where HSE is responsible for enforcing the health and safety legislation. Then we will seek to identify from the information you provided:

- Who is responsible for health and safety at the location of the complaint?
- Who is at risk of injury or ill health or has no adequate welfare facilities?
- What injury or ill health could result and how likely is this?
- A complaints officer will then assess your complaint and place it into one of the following categories:
 - Red = Serious Risk and a complaints officer will follow it up as a high priority within 24 hours of receipt (or it will be passed to an inspector for an on-site investigation)
 - Amber = Significant Risk and a complaints officer will follow it up within five days of receipt
 - Green = Low Risk and it will not be followed-up by HSE

What we will do:

We may ask the employer to investigate your complaint or we may look into it ourselves. However, we cannot successfully follow up your 'red' or 'amber' complaint if, from the information you provided, we are not able to identify or establish who is responsible for the work that you have complained about from the information you provided. In such situations, this will be recorded as a 'matter of concern' and no action will automatically be taken. However, if the 'matter of concern' has been assessed as 'red', it will be reviewed by an inspector.

The other situations where HSE will not investigate your complaint are:

- when you make a complaint anonymously to HSE or withhold contact details. This is because we are not able to substantiate or discuss the information with you or ensure that it is not a malicious complaint;
- when you have not raised the issue with the person responsible for health and safety or your trade union – unless, of course, you have good reason to believe you would be placed in a vulnerable position if you did raise your concerns with this person;
- when there are no reasonably practicable precautions to deal with the matters that you raised;
- when it is impracticable to pursue your complaint;

If you want feedback, we will contact you and let you know what we have done. Or, if we have assessed your complaint as low risk 'green', we will explain our decision.

DfE advice on trade union facility time

For school leaders, governing bodies, employers and employees in schools

January 2014

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Summary

ABOUT THIS DEPARTMENTAL ADVICE

This is non-statutory advice from the Department for Education.

By law, trade union representatives are entitled to reasonable paid time off from their regular job to enable them to perform their union duties and to undertake relevant training.¹ Trade union members, including representatives, may also ask for unpaid time off to undertake activities. Together, these arrangements constitute facility time.

This advice explains what facility time is, clarifies the flexibilities available to schools and sets out the department's expectations about how facility time should be managed. It also sets out new measures to ensure better accountability and transparency for spending on facility time, which are supported by the findings of the Department for Education's call for evidence. The advice reflects the legislation and the Acas Code of Practice on trade union duties and activities.

EXPIRY OR REVIEW DATE

This advice will next be reviewed in January 2015.

WHO IS THIS ADVICE FOR?

This advice is for school leaders, governing bodies, employers and employees in all maintained schools and academies in England.

KEY POINTS

- Union representatives² in schools are entitled to reasonable **paid** time off during working hours to take part in trade union duties. Union representatives and members are also entitled to reasonable **unpaid** time off for trade union activities.
- There is substantial flexibility for maintained schools and, in particular, academies, to determine their own approaches to facility time to ensure positive workplace relations.
- All union representatives who receive facility time to represent members employed in schools should spend the majority of their working hours carrying out their main duties as school employees.
- Employers should ensure that spending on facility time is as efficient as possible.
- There should be full accountability and transparency on facility time given to trade unions.

INTRODUCTION

Trade union facility time is reasonable time off for trade union duties and activities. This entitlement is set out in the Trade Union and Labour Relations (Consolidation) Act 1992³ and the Acas Code of Practice on time off for trade union duties and activities.

The Department for Education has undertaken a review of trade union facility time in schools. A public call for evidence was launched on 19 September 2013 to gather views from employers, schools, representative organisations, governors and members of the public. This call for evidence asked for views about how facility time should operate. It asked how taxpayer subsidy of trade union activity through paid facility time could be made more transparent and efficient, and sought views on what constitutes 'reasonable' time off for trade union duties.

¹ Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) sections 168 to 173.

² Trade union representatives, union learning representatives and health and safety representatives all have statutory rights attached to their respective roles under TULR(C)A / Safety Representatives and Safety Committees Regulations 1977, see also Code of Practice and HSC Code of Practice: Time Off for Training Safety Representatives (1978). Local facility agreements may also be in place.

³ Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) sections 168 to 173. Local facility agreements may also be in place.

The results of the call for evidence have been published on the Department for Education's website. The results demonstrate that there are examples of good practice, where facility time benefits schools and is managed efficiently and transparently. There are also, however, examples where spending is very high compared with other areas of the country. The majority of respondents agreed that there is a lack of accountability and transparency about how facility time is managed, and that all trade union representatives should be grounded in current classroom practice.

This advice is designed to provide information for school leaders, governing bodies, employers and employees on managing trade union facility time in schools. A glossary of some of the main terms used in the advice, as well as links to further sources of information, are provided at the end of the document.

1. FACILITY TIME IN MAINTAINED SCHOOLS AND ACADEMIES

The legislation on time off for trade union duties and activities applies to all employers, including those responsible for maintained schools, academies and free schools. Within this legislation there is significant flexibility for all schools to determine their own approaches to facility time. This section explains the legislation and the flexibilities available to maintained schools and academies.

While this flexibility will continue, the call for evidence did produce some clear expectations about how facility time should be managed in schools. These are explained in **Section 2** of this advice. In making decisions about facility time, we would encourage school leaders, employers and managers to consider these expectations and the new transparency arrangements set out in section 2.4. School leaders, employers and managers will also want to consider the benefits of facility time, such as improved workplace relations and early intervention in relation to complaints and grievances.

1.1 Entitlement to time off for trade union duties and activities

Employees who are union representatives of a trade union recognised by their employer are entitled to **reasonable time off, during working hours and without loss of pay, to carry out union duties and undergo relevant training.**

Trade union duties include:

- negotiations with the employer, or other functions connected with the subjects of collective bargaining, such as terms and conditions, redundancy and dismissal arrangements.
- preparations for negotiations, including attending relevant meetings.
- informing members of progress and outcomes of negotiations.
- matters of discipline (e.g. accompanying employees to internal hearings).⁴
- attending training in aspects of industrial relations relevant to carrying out their trade union duties. This training must be approved by the Trades Union Congress or by the trade union of which he/she is an official.

Employees who are union learning representatives and trade union health and safety representatives are also entitled to paid time off to carry out their duties and training. For union learning representatives to take time off, the employer must have notice in writing that the employee is a learning representative of that union. The Health and Safety Executive issues its own advice and codes for health and safety representatives.⁵

⁴ In the case of local representatives these employees may be outside their own school if a local facility agreement allows for this.

⁵ Health and Safety Executive advice and Codes of Practice

Union members and union representatives may also request **reasonable unpaid time off during working hours to take part in union activities**. The Department for Education expects time off for trade union activities to be unpaid. Activities include:

- meetings with full time officials, or branch, area, regional or national meetings of the union where the business of the union is under discussion.
- meetings of official policy making bodies such as the national executive or annual conference.
- workplace meetings to discuss and vote on the outcome of negotiations with the employer.
- voting in union elections.

The Acas Code of Practice on time off for trade union duties and activities sets out in detail the difference between trade union duties and activities and provides examples.⁶

Employers should ensure that facility time is not used for any activities related to lobbying for, planning or carrying out industrial action. **There are no circumstances under which an employee can claim time off to take industrial action.**

The entitlements in relation to paid time off do not extend to people who are not employees.⁷ All teachers, school leaders and support staff who receive facility time to carry out trade union duties and activities should be employed to work in a school, and have a responsibility to participate in their school's arrangements for appraisal. Their objectives should reflect their school-based jobs rather than their trade union work.⁸

1.2 Managing facility time in maintained schools and academies

The arrangements for how maintained schools and academies manage their facility time budgets and arrangements are set out below. In both cases, it is not a legal requirement to have a formal facility time agreement and so it may be more appropriate to agree simpler, more flexible arrangements. Any agreement reached should be in writing and reviewed on a regular basis.

How maintained schools manage facility time

Simplification of local funding arrangements for 2013-14 means that maintained schools now have more flexibility to manage facility time budgets.

Funding for trade union facility time is delegated to maintained schools in the first instance. For maintained primary and secondary schools⁹ the local authority may propose that this funding should be pooled centrally. The relevant members of the schools forum are responsible for deciding whether funding will be returned from the schools to the local authority. This is known as de-delegation. To enable schools forum representatives to decide what is best for their schools, the local authority should provide clear information in advance about how funds will be spent and how the service will benefit schools. Schools forum members should seek the views of the schools they represent before the decision is taken.

⁶ Code of Practice Section 1 (duties) and Section 3 (activities).

⁷ Whilst we would expect all union representatives to be currently employed in schools, we are aware that in some cases recently retired teachers, school leaders or support staff receive facility time under a local agreement to represent members. These arrangements should be reviewed on a regular basis to ensure they are providing benefits. In other cases there may be a local facility agreement in place which provides for representation beyond the school where the representative is employed. If a representative works in a school where the local authority is not the employer and the employer chooses to continue the local facility agreement, this teacher will be entitled to reasonable paid time off to carry out trade union duties related to wider local representation.

⁸ All teachers and school leaders in maintained schools must also be appraised against the relevant standards as well as their objectives.

⁹ De-delegation does not apply to maintained special schools, nursery schools or Pupil Referral Units.

In local authorities where the schools forum has decided **not** to de-delegate funding, individual schools manage their own facility time budget. This allows flexibility: schools may choose to organise their own facility time arrangements, buy into local authority services or pool funding with other schools.

There may be facility time agreements which have been agreed in the past at a local level. Local agreements can always be re-negotiated even if they have been long standing arrangements,¹⁰ provided they have not been incorporated into individual employment contracts (this practice is rare). Re-negotiations may be needed to ensure efficient spending on facility time and fair, transparent and up-to-date arrangements.

How academies and free schools manage facility time

As with maintained schools, funding for trade union facility time is delegated to academies and free schools in the first instance. This gives them the flexibility to manage their own facility time budgets.

Where the employer (i.e. the academy trust) recognises trade unions, union representatives working in the academy or free school are entitled to reasonable time off. This could be agreed formally, or on an ad hoc basis as needed. A number of academies manage their own facility time arrangements at school level. Others have made the decision to buy into local facility time services by agreement, to be reviewed regularly. Some larger academy trusts have set up their own agreements directly with recognised trade unions. In some areas groups of academies share the cost of facility time, and review their pooled allocation on a regular basis.

Following a TUPE transfer, an academy should comply with any existing facility time agreement until they give notice that they want to end or re-negotiate this agreement.

The following examples demonstrate how different employers have reviewed and revised their facility time arrangements:

Example 1: review of facility time arrangements

Earlier this year Trafford Council ran a consultation on trade union facility time, with a view to revising their facility time allocation model and improving efficiency. The revised model still de-delegates facility time funding from maintained schools back into a central fund. Academies that have opted in also pay a set amount per pupil: the charges for academies and maintained schools are the same. The annual facility time budget for the borough is then allocated between participating trade unions. Each union is allocated a fixed amount which translates into days their representative can spend away from teaching, carrying out trade union duties and representing members across the borough. There are no full time trade union representatives.

The transparency of the model brings benefits. There is a clear, fixed allocation for the unions across the year which is managed centrally and published. Representatives also have to produce a termly log of their activities to report to the local authority.

cont'd...

¹⁰ Facility time agreements will normally have notice provisions. If not, reasonable notice (e.g. up to six months but not less than three months) should be given before ending or re-negotiating an agreement.

Example 2: multi-academy trust

The White Horse Federation is a multi-academy trust encompassing seven primary schools (including two teaching schools). The trust has made the decision not to buy back in to the local authority's facility time fund in 2014-15. There is no clear information from the local authority of how the annual expenditure of £5,100 is used to benefit schools. As an academy trust they are directly accountable to directors, members and trustees as well as to the Education Funding Agency, and need to be able to show tangible results for all areas of spending.

The trust recognises the benefits of union representation for good workforce relations. They encourage each academy in their chain to make sure they have school-based union representatives, and to be flexible in allowing them the time they need to carry out union work, funded from the trust's facility time budget. On the rare occasions when they need to buy in the services of a local authority union representative, they are prepared to pay for this service. They employ human resources experts who provide bespoke advice and support for all of their schools; this also contributes to positive workforce relations.

Example 3: traded service for facility time

In North Somerset Council the schools forum made the decision not to de-delegate any funds back to the local authority. Instead, the local authority set up a traded service for facility time. All schools (including academies) can choose whether to buy into the service. The traded service encourages better accountability: the council and the trade unions must provide clear information to schools about the benefits. Maintained schools, special schools and academies are charged the same amount (just over £1.70 per pupil), and those schools who do not wish to buy into the pooled fund are able to buy the services of representatives on an ad-hoc basis. Focusing on work that is of genuine mutual benefit is the key to making the service cost-effective. The council runs a 'one day a week' model which helps to keep costs down and reduce disruption in schools. The funding arrangements for local authority level union representatives of the recognised trade unions allow those representatives time off to undertake union duties on a particular day of the week, each week during term time. All regular liaison meetings and most consultation and case work meetings are held on that day, and representatives carry out their school jobs for the rest of the week. The council operates an invoice approval system, allowing for accountability without creating a new reporting system.

1.3 Facilities for union representatives

When employers and school leaders are considering facility time arrangements, they may also want to consider the use of the following facilities:

Office facilities

There is no statutory right to office facilities for union representatives, except for those engaged in duties related to collective redundancies and the transfer of undertakings, unless a local agreement contains provisions for these. Many employers make facilities available to representatives, such as a meeting room, access to a telephone and other communication media, and use of a notice board. Office facilities should not be used for union activities which are only union facing and/or which encourage or promote industrial action. The Acas Code of Practice sets out further advice on use of office facilities.

'Check-off'

Some employers offer a 'check-off' facility which allows employees who are trade union members to pay their union subscriptions by deduction from their pay at source. Employers are not required to offer a

‘check-off’ facility unless there is a contractual entitlement or local agreement providing for this to be made available. It is possible to withdraw from local agreements on notice. If employers choose to offer check-off they may charge the union an administration fee: for example, some employers charge 5% of the value of the fees collected.

2. MANAGING FACILITY TIME SPENDING: ‘REASONABLE’ TIME OFF, EFFICIENCY, ACCOUNTABILITY AND TRANSPARENCY

When making decisions about facility time spending, we would encourage employers and school leaders to take into account the expectations set out below, which are based on the clear messages emerging from the call for evidence.

2.1 What is ‘reasonable’ time off?

The call for evidence asked for views on the percentage of working hours which could be considered ‘reasonable’ time off to carry out trade union duties and activities. A majority of respondents expressed the view that trade union representatives should be grounded in classroom practice, and should spend more than 50% of their time in the classroom. Most school union representatives, who represent members in a single school, do not request any time off for trade union duties during their teaching time. However, many local representatives, whose duties are related to wider local representation outside their own school, currently spend up to 100% of their working hours on trade union work.

We agree with the majority of respondents to the call for evidence that **no teacher funded by the taxpayer should work full time on union work**. The provision in legislation is for employees to be permitted reasonable time off during working hours: the clear implication is that working hours should be spent principally on carrying out their main duties as an employee.

Whilst fully recognising that trade union representatives are entitled to reasonable time off in appropriate circumstances, the Department for Education expects all trade union representatives to spend **the majority of their working hours carrying out their school-based jobs**. We believe that it should be possible for local union representatives to fulfil their main union duties in one day a week or less, as demonstrated by the example of North Somerset Council above.

We would encourage all employers in schools and school leaders, especially those who currently fund full-time union representatives from facility time budgets, to review their facility time arrangements to ensure that **all union representatives are grounded in current classroom practice**.

2.2 Efficient spending on facility time

Moving beyond individual trade union representatives, at school/employer level, the call for evidence demonstrated the **importance of ensuring spending on facility time is as efficient as possible**.

Published data on current facility time spending shows significant variation in spending; from £1.00 per pupil per annum in one local authority, to £5.70 per pupil per annum in a local authority of a similar size. Even taking into account the need for flexibility according to local circumstances, the Department for Education believes that this is an unacceptable level of variation. The views of many respondents demonstrate that reductions in overall facility time spending can be made, whilst still allowing for flexibility according to local circumstances.

The department’s review found that many local authorities and other employers have already reduced spending to approximately 0.1% of the pay bill, and others have made further reductions to 0.05% or less. This should include funding for all trade union representatives based in schools; representing support staff, classroom teachers and school leaders.

Whilst recognising the need for flexibility, we believe that **employers can reduce spending in line with these amounts and still support effective facility time arrangements in their school(s)**. As many respondents to the call for evidence suggested, we would encourage employers to review spending on facility time and consider how it could be made more efficient.

Efficiency of ‘pooled’ facility time funds

A number of academy trusts responding to the department’s call for evidence raised the issue of inconsistency in local authority facility time arrangements. Most local authorities allow academies to buy into central facility time funds, but academy trusts report that charges range from less than £1 per pupil per annum to more than £7 per pupil per annum, and the benefits of buying into the service are often unclear. Some local authorities charge academies significantly more than the amount paid in by maintained schools, and some do not allow academies to buy into funding arrangements at all.

All employers or providers managing a pooled facility time fund should provide clear information to participating schools about **how much each school will be charged, how the money will be used and how this benefits schools**. As a rule charges should be the same for similar schools: if there are different rates for different types of schools the reasons for this should be made clear.

2.3 Better accountability

A strong consensus emerged from the call for evidence that there should be better accountability to employers and managers for how facility time is used. The majority of respondents agreed that **trade union representatives should be accountable to their managers and/or employers for the duties and activities carried out during facility time**.

Requests for time off

This need for better accountability applies in particular to requests for time off. Union representatives and/or members should give managers as much advance notice as practically possible when requesting time off, and advise them of the purpose, time and place. Wherever possible they should ensure that time off will not interfere with the normal functioning of the school. The Acas Code of Practice provides that union representatives should minimise disruption by being prepared to be as flexible as possible in seeking time off, particularly in circumstances where it is difficult for colleagues and managers to provide cover for them in their absence. Equally employers should recognise their obligation to allow union representatives to undertake their duties.

When dealing with requests for time off, employers, school leaders and managers should consider what constitutes ‘reasonable’ time off, and whether the request should be accommodated. They can take into account the amount of agreed time already taken and/or prospective time off. The following questions should be considered:

- Can the school accommodate the amount of time requested, and ensure adequate cover for safety and the provision of educational services?
- Does the request contain the right information (e.g. purpose, time and place - including agendas of meetings where appropriate), and has enough advance notice been given to provide alternative cover arrangements where necessary?
- Does it attract paid or unpaid time (i.e. will the time be used to undertake specific trade union duties, or for activities which should not attract paid time off)?
- If the request cannot be accommodated is there a reasonable alternative?

It is the responsibility of the manager (in consultation with the employer) to decide whether a request for time off is appropriate, and to decline a request if it is not considered reasonable. The Acas Code of Practice provides information on disputes over time off arrangements.

Reporting arrangements

All employers and managers should ensure that reporting arrangements are in place for trade union representatives to account for the duties and activities they have carried out during trade union facility time. It should not be necessary to provide more than a brief description of the work carried out, to avoid

unnecessary bureaucracy or any breach of confidentiality.

Examples of good practice from the call for evidence include:

- a monitoring system with a time plan and details of trade union duties and activities undertaken, including minutes of meetings where appropriate.
- a simple termly report to the schools forum including evaluation of the service.
- an account of total hours spent under agreed headings.
- A code of conduct for trade union representatives (agreed between the employer and recognised trade unions).

2.4 Transparency

The majority of respondents agreed that details of facility time spending should be gathered and published, to enable taxpayers to see how their money is being spent.

Gathering information at national level

From 2014 the Department for Education will ask all local authorities and academies to provide separate information about trade union facility time spending as part of the regular financial returns to government.¹¹ **All employers in schools will need to ensure that reporting arrangements are in place so that spending on facility time is captured accurately in these returns.**

Publishing information at local level

For maintained schools, it is the role of the schools forum to decide whether trade union facility time funds should be pooled at local authority level or managed by schools. Schools forum regulations and associated guidance¹² state that the local authority must promptly publish all papers considered by the forum and the minutes of their meetings on their website. Recommendations to, and decisions of, the schools forum must be clearly set out. **Local Authorities should publish decisions made by schools forums on facility time spending, including details of the amounts allocated.**

Academies and free schools also have a responsibility to ensure their spending is transparent and efficient. **Academies and free schools should include details of facility time spending as part of their published financial reports.**

A number of local authorities and other employers in schools already have systems in place to ensure better accountability and transparency for facility time spending, and review these annually to ensure that the service they provide is cost-effective.

¹¹ Local Authorities will be required to submit additional information on staff costs for facility time as part of the Section 251 return for budget forecasting, and academies will be required to disclose facility time spending in their annual budget forecast return.

¹² Department for Education guidance on the role of the schools forum.

GLOSSARY

Trade Union and Labour Relations (Consolidation) Act 1992 – TULR(C)A

This Act relates to trade unions, employers' associations, industrial relations and industrial action. The provisions in sections 168-173 relate to time off for trade union duties and activities (collectively known as facility time). These provisions are also set out in the annex to the Acas Code of Practice on time off for trade union duties and activities.

Acas Code of Practice on time off for trade union duties and activities

Under section 199 of TULR(C)A the Advisory, Conciliation and Arbitration Service (Acas) has a duty to provide practical guidance on the time off to be permitted by an employer to a trade union official or member. The code of practice sets out authoritative guidance describing the responsibilities which employers and trade unions share in considering reasonable time off. The provisions in the code of practice are admissible in evidence in proceedings before an Employment Tribunal.

Trade union representative

This advice reflects the Acas code of practice, which uses the term 'union representative' to mean an employee who has been elected or appointed in accordance with the rules of the independent union, to be a representative of all or some of the union's members in the school(s) where the union is recognised for collective bargaining purposes. This is intended to equate with the legal term 'trade union official'.

Union learning representative

A ULR is an employee who is a member of an independent trade union recognised by the employer who has been elected or appointed in accordance with the rules of the union to be a learning representative of the union at the workplace.

Schools forum

Schools forum is made up of representatives from schools and academies, but with some representation from other non-school organisations. The forum acts as a consultative body on some issues and a decision making body on others. The forum is responsible for decisions on proposals to de-delegate funding from maintained primary and secondary schools (e.g. for staff supply cover including facility time).

De-delegation

Funding arrangements allow maintained primary and secondary¹³ schools forum representatives to vote on behalf of their phase to transfer funding from delegated budgets to a central budget (held by the local authority). This is known as de-delegation.

¹³ De-delegation does not apply to maintained special schools, nursery schools or Pupil Referral Units.

FURTHER SOURCES OF INFORMATION

Results of the Department for Education call for evidence on trade union facility time in schools

Department for Education call for evidence document:

Advisory, Conciliation and Arbitration Service (Acas) Code of Practice on trade union duties and activities

Acas advice on trade union representatives in the workplace:

The rights of trade union representatives

Taxpayer funding of trade unions: delivering savings in local government

(Department for Communities and Local Government, March 2013)

Government response to Civil Service facility time consultation

Department for Education guidance on the role of the schools forum



Dear

DfE Advice on trade union Facility Time

The five main teacher trade unions are writing to local authorities and chain academy employers to draw attention to the unions' joint observations on the recently published DfE Advice on trade union Facility Time.

- **The DfE advice is “non-statutory advice”¹.** Employers and school leaders are not required to have regard to the advice or to follow it but are required to comply with their statutory obligations. The right to time off for trade union duties, activities and training is in legislation, namely sections 168-173 trade union & Labour Relations (Consolidation) Act 1992, section 10 of the Employment Rights Act 1999, the Safety Representatives and Safety Committees Regulations 1977, and the ACAS Code of Practice: Time Off for trade union Duties and Activities. Employers and trade unions are free to agree arrangements which exceed the statutory minimum requirements in order to aid and improve industrial relations. The DfE advice should not be applied so that the rights to facility time are unlawfully reduced below the statutory minimum.
- **The DfE advice acknowledges the “efficiency of ‘pooled’ facility time funds”²** and recognises that many academies have bought into local facility time arrangements. De-delegation and central pooling of facility time funding is the least disruptive to education and means that no single school faces a disproportionate cost. All schools and school chains are urged to participate in these schemes or to contact local union representatives locally if it is considered that the local arrangements could be improved. Employers should be aware that where the absence of central arrangements means that union members are left unrepresented, unions will seek trade union representation at school level which is potentially disruptive as it will undoubtedly necessitate time off for training in addition to time off for the exercise of trade union duties.
- **Neither the legislation, nor the ACAS Code prescribe what is ‘reasonable’ time off for trade union duties and activities.** The DfE advice suggests that *“trade union representatives should be grounded in classroom practice, and should spend more than 50% of their time in the classroom.”³* The unions agree that trade union representatives in the education sector should be encouraged to maintain links with the workplace; indeed, many trade union activities contribute to this. The legislation does not prescribe that time off for trade union duties should be a percentage of contracted working hours. What is reasonable will depend on the circumstances. Employers should be aware that using a blanket percentage of working time to determine what is reasonable time off could lead to claims that the statutory right to reasonable time off has been breached.
- **There should be no presumption against facility time being full time.** Although the DfE advice states that, *“no teacher funded by the taxpayer should work full time on union work,”* and goes on to state that employees’ *“working hours should be spent principally on carrying out their main duties as an employee,”⁴* it is a matter for the employer and the recognised trade union to agree what is reasonable in all the circumstances. The advice does not define what an employee’s “main” duties are. The unions believe that it would be dangerous for employers to make an interpretation of what is meant by the term “main” duties in this part of the advice; employers are urged to continue to apply the clear principles set out in the legislation and the ACAS Code.
- **The most efficient way of distributing facility time should be a matter for local agreement.** Based on partial information from one small local authority the DfE advises that *“it should be possible for local union representatives to fulfil their main union duties in one day a week or less.”⁵* Neither the legislation nor the ACAS Code ranks the defined “union duties”. Each duty has equal weight.

Whatever the DfE’s understanding of “main union duties” is, the DfE clearly accepts that it will not be possible for *all* union duties to be carried out in one day a week or less. It is for the employer and the recognised trade unions to discuss what facility time is reasonable.

- **Any changes to any facility time agreements, including funding, must be the subject of negotiation between the employer and the recognised trade unions.** The DfE provides a helpful reminder that, *“Following a TUPE transfer, an academy should comply with any existing facility time agreement until they give notice that they want to end or re-negotiate this agreement.”*⁶

Should any employer wish to discuss the detail of a local arrangement for facility time please contact our local union representatives.

Yours faithfully

Brian Lightman

Mary Bousted

Russell Hobby

Chris Keates

Christine Blower

1. DfE advice on trade union facility time page 3
2. DfE advice on trade union facility time page 6
3. DfE advice on trade union facility time page 11
4. DfE advice on trade union facility time page 11
5. DfE advice on trade union facility time page 11
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